

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION 29512

PERMIT 21319

Permittee: Michael L. Hildreth and Susan K Hildreth
3750 Burke Hill Road
Ukiah, CA 95482

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA; and (f) demonstrated that the requirements of the Policy for Maintaining Instream Flows in Northern California Coastal Streams have been met. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2012-0029).

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Therefore, **Application 29512** filed on **March 22, 1989** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:	Tributary to:
<u>(1) Robinson Creek Underflow</u>	<u>Russian River</u>
<u>(2) Unnamed Stream</u>	<u>Robinson Creek</u>
	<u>Russian River</u>

within the County of **Mendocino**.

2. Location of point(s) of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(1) North 2,164,693 feet and East 6,221,108 feet	NE ¼ of SE ¼	5*	14N	12W	MD
(2) North 2,164,393 feet and East 6,222,558 feet	NW ¼ of SW ¼	4*	14N	12W	MD

Location of point of redirection

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(2) North 2,164,393 feet and East 6,222,558 feet	NW ¼ of SW ¼	4*	14N	12W	MD

Location of place of storage

By California Coordinate System of 1983 in Zone XX	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(2) North 2,164,393 feet and East 6,222,558 feet	NW ¼ of SW ¼	4*	14N	12W	MD

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NW ¼ of SW ¼	4*	14N	12W	MD	19
Frost Protection	NE ¼ of SE ¼	5*	14N	12W	MD	14
	Total					33

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **33** acre-feet per annum to be collected from **December 15** of each year to **March 31** of the succeeding year at point of diversion **1** and from **November 1** of each year to **March 31** of the succeeding year at point of diversion **2**. The maximum amount diverted under this permit shall not exceed 33 acre-feet per annum. This amount is inclusive of 9.4 acre-feet for replenishment of initial storage withdrawn for beneficial use.
(0000005DA)
6. No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(0000005I)
7. The maximum rate of diversion at point of diversion **1** to storage shall not exceed **0.41** cubic feet per second.
(0000005J)
8. The capacity of the reservoir covered by this permit (Application 29512) shall not exceed **23.6** acre-feet.
(0000005N)
9. Construction work and complete application of water to the authorized use shall be prosecuted with reasonable diligence and be completed by **December 31, 2027**.
(0000009)

10. The State Water Board reserves jurisdiction to impose conditions to conform this water right to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

11. If the claimed existing prior right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the total quantity of water diverted and/or collected to storage, the rate of diversion, and the amount beneficially used under this permit shall be reduced by the net of the face value specified in this permit less the respective amounts recognized under the quantified existing prior right during the season specified in this permit. No water shall be diverted to the place of use during the season authorized by this permit, whenever the amounts diverted can be covered by the quantified existing prior right.

Permittee shall forfeit the permit if he/she transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Board.

Permittee shall divert water under the claimed existing right only in accordance with the law.

(0000021A)

12. The State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting of diversions, withdrawals, releases and streamflow in a standardized format if and when resources become available. Such real-time reporting will be required upon a showing by the State Water Board that the program and the infrastructure are in place to accept real-time electronic reports. Implementation of the reporting requirements shall not necessitate amendment to this right.

(0090031)

13. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under the permit can be released. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe, or alternative facility, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

14. No water shall be diverted to storage under this permit unless permittee is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of all diversions under this permit that includes the date, time, rate of diversion at time intervals of one hour or less, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0060046)

15. No water shall be diverted under this permit unless permittee is monitoring and reporting the water surface elevation in the reservoir. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring water surface elevations from the maximum water line to the minimum water line known to exist for the reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed and the mark or reading corresponding to the maximum water line of the reservoir with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of water surface elevations. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

(0100047)

16. No water shall be diverted under this permit unless permittee is monitoring and reporting the withdrawal of water for beneficial use and the release of water from the reservoir. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water withdrawn for beneficial use or released to the stream channel from each reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Permittee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Permittee shall maintain a record of all withdrawals of water for beneficial use or releases of water to the stream channel under this permit that includes the date, time, rate of withdrawal or release at time intervals of one hour or less, and the amount of water withdrawn or released. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0100052)

17. No water shall be diverted at point of diversion 1 under this right unless the flow in Robinson Creek is at or above 53 cubic feet per second, as determined at point of diversion 1.

(0140060)

18. No water shall be diverted under this water right unless right holder is bypassing the flow required by this water right by use of a passive bypass device.

Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every year after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights. Evidence required by this condition shall include current photographs of the system in place and a statement, signed by the right holder, certifying that the system is still operating as designed.

(0060062C)

19. No water shall be diverted under this permit unless permittee is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how permittee will comply with the terms and conditions of this right. Permittee shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.

(0000070)
20. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090A)
21. No water shall be diverted under this permit, and no construction related to such diversion shall commence, unless permittee obtains all necessary permits or other approvals required by other agencies. Permittee shall transmit copies of all permits or other approvals to the Division of Water Rights.

(0000203)
22. For the protection of Robinson Creek watershed, an erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Deputy Director of Water Rights, prior to diversion of water. Before storing water, Permittee shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.

(0000207)
23. This permit is specifically subject to the prior right of Joseph and Lena LaMalfa, or successors in interest, under appropriation issued pursuant to Application 18200 (License 9543) including any other of their legally held prior rights.

(000000T)
24. To allow for the protection of potential habitat of the northwestern pond turtle (*Clemmys marmorata marmorata*) and for the continued growth of special-status species such as, Burke's goldfields (*Lasthenia burkei*), Baker's meadowfoam (*Limnanthes bakeri*), and North Coast semaphore grass (*Pleuropogon hooverianus*), permittee shall:
 - a. Maintain existing setback around the reservoir authorized under this permit to encompass the interior of the upper embankment and the fringe of wetland vegetation surrounding the reservoir. No new ground disturbing activities shall occur within the setback area. Equipment access within the setback area shall be limited to activities necessary for the ongoing operation of the reservoir and shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Natural vegetation shall be preserved and protected within the setback area. Planting of native vegetation within the setback area is allowed;
 - b. Maintain existing setback along Robinson Creek authorized under this permit to encompass the existing riparian vegetation. No new ground disturbing activities shall occur within the setback area. Equipment access along the setback area shall be limited to activities necessary for the ongoing operation of the place of use and shall incorporate best management practices to minimize disturbance to water, soils, and vegetation.

Natural vegetation shall be preserved and protected within the setback area. Planting of native vegetation within the setback area is allowed;

- c. Make no introduction of non-native species into the reservoir or into the project area.

These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to Application 29512.

(0400500A)

- 25. Permittee shall report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation.

(9990999)

THIS PERMIT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
(0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.
(0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
(0000011)
- D. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.
(0000014)
- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
(0000015)
- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the Department of Fish and Game.
(0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
PHILLIP CRADER FOR

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: OCT 09 2012